

Claims Report

United States Army Claims Service

Personnel Claims Notes

Inclusion of Proper Forms in Claims Files

The United States Army Claims Service (USARCS) has received several requests for reconsideration from field claims offices that do not include a U.S. Department of Defense (DD) Form 1842¹ or a DD Form 1844² in the file. Typically, the field office recommends that the USARCS deny the request. However, if the USARCS decides to pay the claim, it is impossible to determine the amount to pay without one of these forms.

Paragraph 11-9b of *Department of the Army Pamphlet 27-162* states: "Initially, the claim does not need to be submitted on DD Forms 1842 and 1844; however, these forms must be submitted before the claim may be paid."³ It goes on to provide that claimants who submit such claims should be informed in writing that they must submit properly completed forms within a fixed period of time (normally thirty days). This requirement pertains to all chapter 11⁴ claims (regardless of the date filed) in order to be considered properly presented claims.

This reminder will allow the USARCS to take immediate action on reconsideration requests and will avoid the need to return claims to the originating office for inclusion of claims forms. Ms. Shollenberger.

Staff Judge Advocates Must Personally Approve and Disapprove Waivers of Maximums

The new version of *Army Regulation (AR) 27-20* gives staff judge advocates the authority to waive the maximum amounts allowable contained in the Allowance List-Depreciation Guide.⁵ This new authority must be exercised personally by the

staff judge advocate; it cannot be delegated.⁶ Because the staff judge advocate is the only individual who can waive the maximums, he is also the only person who can disapprove such waivers. Therefore, if the issue of waiver is reasonably raised in a personnel claim, the claim should be forwarded to the staff judge advocate to decide whether waiver is appropriate.

For example, suppose a claimant requests waiver of the \$3000 maximum amount allowable for an item of furniture. If the claimant provides adequate evidence that the piece of furniture is worth \$5000 and it has been completely destroyed (it cannot be economically repaired), the claim should be forwarded to the staff judge advocate. It would not be appropriate for a claims judge advocate to settle the claim by limiting payment to the maximum amount allowable (\$3000), because the staff judge advocate is the only person who can decide whether or not to waive the maximum. On the other hand, if the claimant has not submitted adequate evidence that the piece of furniture is currently worth over \$3000 (after taking appropriate deductions for depreciation), the claim need not be forwarded to the staff judge advocate. In this case, it is appropriate for a claims judge advocate to settle the claim by paying the claimant the depreciated value of the piece of furniture. Such a claim need not be forwarded to the staff judge advocate unless the claimant submits a proper request for reconsideration.

It is important for staff judge advocates to remember that strict requirements must be met before maximum amounts allowable can be waived. The claimant must demonstrate good cause for the waiver and provide clear and convincing evidence that (1) the property was not held for use in a business, (2) the property was owned by the claimant, (3) the property had the value claimed, and (4) the property was lost or damaged in the manner that was alleged by the claimant.⁷ The staff judge advo-

1. U.S. Dep't of Defense, DD Form 1842, Claim for Loss or Damage to Personal Property Incident to Service (Dec. 1988).

2. U.S. Dep't of Defense, DD Form 1844, List of Property and Claims Analysis Chart (Feb. 1989).

3. U.S. DEP'T OF ARMY, PAM 27-162, CLAIMS PROCEDURES (1 Apr. 1998) [hereinafter DA PAM 27-162].

4. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS, ch. 11 (31 Dec. 1997) [hereinafter AR 27-20].

5. The new version of AR 27-20 delegates the authority to waive maximum amounts allowable to the heads of area claims offices. *Id.* para. 11-14b. The heads of area claims offices are generally staff judge advocates. *Id.* para. 1-5e(1). The Allowance List-Depreciation Guide is reproduced in DA PAM 27-162, *supra* note 3, tbl. 11-1.

6. AR 27-20, *supra* note 4, para. 11-14b.

7. *Id.*

cate must personally sign a memorandum certifying this information.⁸

Good cause for waiver of a maximum amount allowable can consist of various justifications. One example is evidence that a claimant was unaware of the value of the item that he possessed and, therefore, did not obtain insurance or other protection. Another example is where a claimant was not reasonably able to obtain insurance protection because it was not available in the area where he was stationed. The evidence that supports “good cause” need not be clear and convincing;⁹ this standard only applies to the four factors listed above (non-business nature of the property, ownership, value, and manner of loss). Lieutenant Colonel Masterton.

Tort Claims Note

Foreign Claims—Not Just for Overseas Offices

Foreign claims are often thought of by most claims offices within the United States as just that—claims that are foreign to them. However, many claims offices within the United States receive foreign claims. These offices need to recognize foreign claims, know the proper method of processing these claims, and advise the claimant or his attorney on how to properly present the claim. Recently, the USARCS received several foreign claims that were improperly processed at installation claims offices. The attorneys who represented many of these claimants were given incorrect advice. This note will assist claims personnel identify foreign claims and process them properly.

Foreign claims are handled under one of three statutes or under an international agreement. They may fall under the Military Claims Act (MCA),¹⁰ a Status of Forces Agreement (SOFA), the Foreign Claims Act (FCA),¹¹ or another interna-

tional agreement between the United States and a foreign nation.¹² The rules that govern the processing of claims under the three statutes or agreements may be found in AR 27-20, chapters 3, 7, and 10 respectively.¹³ These statutes or agreements generally create a process for adjudicating claims that is much different from that required by the Federal Tort Claims Act (FTCA).¹⁴ Therefore, it is imperative that the claimant and the government properly handle these claims. After receiving a foreign claim, the claims office should first determine the location where the tort is alleged to have occurred.

Claims for Actions Within the United States

If the action that gave rise to the claim occurred within the United States, its commonwealths, or possessions, the claims attorney must determine whether the tortfeasor is a foreign military member who is in the United States on official duty under a SOFA,¹⁵ an American military member, or a civilian federal employee. If the tortfeasor is a foreign military member, the SOFA applies and the claim should be forwarded to the Foreign Torts Branch (FTB) at the USARCS, as the receiving state office (RSO).¹⁶ If the tortfeasor is an American military member or a civilian federal employee, either the MCA or the FTCA applies and your office should process the claim in the manner that is dictated by those provisions.

Claims for Actions Arising Outside of the United States

If, however, the action that gave rise to the claim occurred outside of the United States and its territories, the claims attorney must determine whether the country in which it occurred has enacted a SOFA with the United States.¹⁷ If a SOFA exists, it controls the processing of the claim. Within the claims arena, SOFAs divide the world into two types of claimants: “third par-

8. *Id.*

9. *Id.*

10. 10 U.S.C.A. § 2734a, b (West 1998).

11. *Id.* § 2736.

12. *Id.* § 2734.

13. AR 27-20, *supra* note 4, chs. 3,7,10.

14. *Id.* §§ 2671-2680.

15. AR 27-20, *supra* note 4, para. 7-1c.

16. SOFAs refer to the country in which foreign troops are present as the “receiving state” and the country that provided those troops as the “sending state.” Thus, the United States is referred to as the receiving state when foreign troops are present within it.

17. Countries that have entered into SOFAs with the United States include members of North Atlantic Treaty Organization (NATO) (Belgium, Canada, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, Spain, and Supreme Headquarters Allied Powers Europe (SHAPE)), Iceland (although a member of NATO, Iceland has not subscribed to the North Atlantic Treaty Organization (NATO) SOFA but has executed a bilateral agreement with the United States which applies only to United States forces in Iceland, but not Icelandic forces in the United States), Japan, Korea, the People's Republic of China (Taiwan), and Australia. AR 27-20, *supra* note 4, para. 7-1c; DA PAM. 27-162, *supra* note 3.

ties” and “all others.”¹⁸ The term “third party” is defined by each individual signatory to a SOFA,¹⁹ but generally includes anyone who is not a member of the force, a civilian component of the force, or a dependent of a member of the force or civilian component of the force. Thus, “third parties” are typically tourists, business travelers, or inhabitants of foreign nations who are present within the receiving state.

Claims Arising in Nations with a SOFA

If the claimant is a “third party” under the SOFA as defined by the receiving state, the claimant must file his claim against a member of the sending state with the RSO that is designated under that nation’s laws.²⁰ (See Appendix A for a listing of RSOs in Germany and Korea.) The U.S. District Court for the District of Columbia has held that claims provisions under a SOFA are the exclusive remedy for claims against the United States arising overseas.²¹ Some receiving states, such as Germany, impose a shorter period in which to file claims than do the FTCA or MCA.²² Thus, it is imperative that a United States claims office that receives such a claim immediately inform the claimant or his attorney of the requirement to file under the SOFA. Claims offices that receive a SOFA claim should not accept the claim, but should prepare a memorandum for record that the claim was presented. The memorandum should include the date that the claim was presented; many RSOs accept that date to toll their statute of limitations.

If the claimant is not a “third party,” the claim is not cognizable under the applicable SOFA. In this case, the claimant must file his claim with the United States under the MCA. Claims offices that receive such claims should accept them and immediately forward the claim file to the FTB at the USARCS for processing. Claims personnel should inform the claimant of the transfer in writing, and provide him the address of the FTB.

Claims Arising in Nations without a SOFA

If the claim arises in a nation that does not have a SOFA with the United States, the issue focuses on the domicile of the claimant. The FCA applies to claimants who are “inhabitants of foreign countries.”²³ “Inhabitant” is not defined by the FCA, however, under *DA Pam. 27-162* the term “inhabitant” does not refer to citizenship or nationality. Rather, the definition of “inhabitant” depends upon “whether the claimant dwells in and has assumed a definite place in the economic and social life of the foreign country.”²⁴ Thus, an American citizen who permanently resides in a foreign country may be an “inhabitant” of that foreign country. However, soldiers or civilian federal employees who are stationed in the foreign country on military orders, their dependents, and American citizens who are in a foreign country as tourists or business travelers are not “inhabitants.”²⁵ A claimant need not be an inhabitant of the country in which the tort occurred for the FCA to apply. Thus, an inhabitant of Bolivia who is injured by the negligent act of a United States government official in Columbia may file a claim under the FCA.

Claims that arise under the FCA are processed by Foreign Claims Commissions (FCCs).²⁶ If a United States claims office within the United States receives an FCA claim and has a FCC with sufficient financial authority²⁷ to process the claim, the claim should be referred to that FCC; otherwise, the claim should be forwarded to the FTB at the USARCS. In these situations, claims personnel should inform the claimant of the transfer in writing, and provide him with the address of either the FCC or the FTB.

If the claimant is not an inhabitant of a foreign country, the claim is cognizable under the MCA. Claims offices that receive such claims should accept them and immediately forward the claim file to the FTB at the USARCS for processing. Claims

18. See, e.g., Agreement under Article IV of the Mutual Defense Treaty Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, July 9, 1966 (1966 Part 2), U.S.-ROK, art. XXIII, 17 U.S.T. 1677.

19. Thus, each member nation of NATO could define third parties differently from the other member nations. AR 27-20, *supra* note 4, para. 7-10b.

20. NATO SOFA, June 19, 1951 (1953 Part 2), 4 U.S.T. 1792, T.I.A.S. No. 2846 (effective Aug. 23, 1953).

21. See *Aaskov v. Aldridge*, 695 F. Supp. 595 (D. D.C. 1988).

22. The German defense cost offices require that claimants file their SOFA claims within 90 days of the date the claim accrued. AR 27-20, *supra* note 4, para. 7-10c.

23. AR 27-20, *supra* note 4, para. 10-2a.

24. DA PAM. 27-162, *supra* note 3, para. 10-2a(1)(a).

25. *Id.*

26. AR 27-20, *supra* note 4, para. 10-6.

27. One-member non-attorney FCCs may disapprove or settle claims up to \$2500, one-member judge advocate or claims attorney FCCs may disapprove or settle claims up to \$15,000, and three-member FCCs may disapprove claims in any amount and may settle claims up to \$50,000. AR 27-20, *supra* note 4, para. 10-9c, d.

personnel should inform the claimant of the transfer in writing and provide him with the address of the FTB.

Appendix B contains a decision tree that graphically illustrates these issues and the statutes that are applicable to foreign torts.

Practical Examples

1. A claimant alleges that he, a family member son of an American soldier, received negligent medical care in Germany. What statute applies?

Using the decision tree, the tort occurred outside the United States in a SOFA country and the claimant, a dependent, is NOT a third party. Thus, the MCA applies.

2. A claimant alleges that she, while visiting her daughter, a American soldier stationed in Belgium, slipped and fell in a United States commissary. What statute applies?

Using the decision tree, the tort occurred outside of the United States in a SOFA country but the claimant IS a third party. Thus, the NATO SOFA applies, and the claim must be filed with the Belgium Defense Cost Office.

3. A claimant alleges that he was involved in an auto accident with a United States Army vehicle at Fort Bragg. Which statute applies?

Using the decision tree, the tort occurred inside the United States and the tortfeasor is not a foreign military member. Thus, the FTCA (or MCA) applies.

4. A claimant alleges that he was involved in an auto accident with a British soldier as part of a joint operation in California. Which statute applies?

Using the decision tree, the tort occurred inside the United States and the tortfeasor IS a foreign NATO military member. Thus, the NATO SOFA applies, and the FTB at the USARCS processes the claim.

5. A claimant alleges that she, an American retiree who permanently resides in Panama, was injured in an auto accident in Panama with a United States Army vehicle. Which statute applies?

Using the decision tree, the tort occurred outside the United States in a non-SOFA country and the claimant is an inhabitant of a foreign nation (even though an American citizen). Thus, the FCA applies. Major Dribben.

Appendix A

Receiving State Offices for SOFA claims:

GERMANY

State (City)	Address
Baden-Württemberg Karlsruhe	Amt für Verteidigungslasten Vorholzstr. 25 76137 Karlsruhe Tel: 0721-133-2416
Baden-Württemberg Schwäbisch Gmünd	Amt für Verteidigungslasten Haussmannstr. 29 73525 Schwäbisch Gmünd Tel: 07171-32258
Bayern Nürnberg	Amt für Verteidigungslasten Kobergstr. 62 90408 Nürnberg Tel: 0911-376-0 (operator)
Bayern Würzburg	Amt für Verteidigungslasten Kroatengasse 4-8 97070 Würzburg Tel: 0931-392-202
Berlin	Amt für Verteidigungslasten Klosterstr. 59 10179 Berlin Tel: 030-24322789
Bremen	Freie Hansestadt Bremen Der Senator Für Finanzen Richtweg 14 28195 Bremen Tel: 0421-361-1 (operator)
Hamburg	Freie und Hansestadt Hamburg Verteidigungslasten Am Gänsemarkt 36 20354 Hamburg Tel: 040-3598-1 (operator)
Hessen	Amt für Verteidigungslasten Lutherberg 3 35394 Giessen Tel: 0641-40004-0 (operator)
Niedersachsen Osnabrück	Stadt Osnabrück Amt für Verteidigungslasten Wittekindstr. 15 49074 Osnabrück Tel: 0541-3231
Niedersachsen Soltau	Amt für Verteidigungslasten Scheibenstr. 1 29614 Soltau Tel: 05191-85-1 (operator)

Nordrhein-Westfalen Detmold	Oberkreisdirektor des Kreises Lippe Amt für Verteidigungslasten Leopoldstr. 15 32756 Detmold Tel: 030-24322789
Nordrhein-Westfalen Soest/Westfalen	Amt für Verteidigungslasten Nellmannwall 4 59494 Soest/Westfalen Tel: 02921-30-0 (operator)
Rheinland-Pfalz	Amt für Verteidigungslasten Rudolf-Virchow-Str. 11 56073 Koblenz Tel: 0261-94703 105
Saarland	Der Minister des Innern des Saarlandes Referat Verteidigungslasten Mainzer Str. 109-111 66121 Saarbrücken Tel: 0681-3000-184
Schleswig-Holstein	Oberfinanzdirektion LV 5 Adolfstr. 14-28 24105 Kiel Tel: 0431-595-4014

KOREA

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Chungang-dong, Kwachon-city, Kyonggi-do
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Appendix B
Determination of Statute

